

1 REPORTER'S RECORD
2 VOLUME 4 OF 7 VOLUMES
3 TRIAL COURT CAUSE NO. 09-02494-CRF
4 APPELLATE COURT CAUSE NO. 10-10-00297-CRF-272

5 THE STATE OF TEXAS) IN THE DISTRICT COURT
6 vs.) BRAZOS COUNTY, TEXAS
7)
8 GREGG CARL BAIRD) 272ND JUDICIAL DISTRICT

9
10 TRIAL ON THE MERITS

11 MARCH 1, 2010

12 PLEA

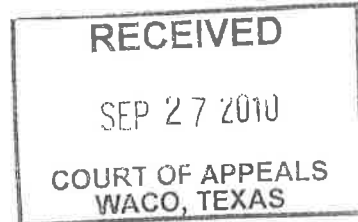
FILED
TENTH COURT OF APPEALS

FEB 07 2011

SHARRI ROESSLER, CLERK



ORIGINAL



18 On the 1st day of March, 2010, the following
19 proceedings came on to be held in the above-titled
20 and numbered cause before the Honorable Travis B.
21 Bryan, III, Judge Presiding, held in Bryan, Brazos
22 County, Texas.

23 Proceedings reported by computerized stenotype
24 machine.
25

A P P E A R A N C E S

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EXHIBITS OFFERED BY THE STATE

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2	Plea Papers	11	11	5
3	Plea Papers	11	11	5
3A	Plea Papers	11	11	5
4	Plea Papers	11	11	5

8:52AM 1 PROCEEDINGS: MARCH 1, 2010

2 THE COURT: Raise your right hand,
3 Mr. Baird.

4 (Defendant sworn.)

8:52AM 5 THE COURT: Let me show you the
6 indictment that has been handed down against you, and
7 let me serve you with a copy of the indictment.

8 Is your name in the upper left-hand
9 corner spelled correctly?

8:52AM10 DEFENDANT: It is.

11 THE COURT: You have two days to prepare
12 for a hearing after having received a copy of the
13 indictment. Are you willing to waive your two-day
14 waiting period?

8:53AM15 DEFENDANT: Yes.

16 THE COURT: The charge is possession of
17 child pornography, 13 counts. I understand you will be
18 pleading on 10 of those in this cause.

19 Do you understand what you're charged
8:53AM20 with?

21 DEFENDANT: Yes, sir.

22 THE COURT: Do you wish to have me read
23 the entire indictment verbatim or do you waive the
24 reading?

8:53AM25 DEFENDANT: I waive the reading.

8:53AM 1 THE COURT: Let me show you State's
2 Exhibit No. 1, which contains your state and
3 constitutional rights and the things you're entitled to
4 in a criminal case.

8:53AM 5 Have you been able to go over this with
6 your attorney?

7 DEFENDANT: I have.

8 THE COURT: Did you understand it?

9 DEFENDANT: Yes, sir.

8:53AM10 THE COURT: These counts, each of them,
11 are third-degree felonies. I am required to tell you
12 the range of punishment, especially since you're
13 pleading without the benefit of a plea bargain.

14 Each count carries a penalty of anywhere
8:53AM15 from two years up to ten years in the Institutional
16 Division and up to a \$10,000 fine.

17 Do you understand that range of
18 punishment?

19 DEFENDANT: Yes.

8:54AM20 MR. PHELPS: I just want to make sure it
21 is on the record that Mr. Baird understands that these
22 cases are stacked.

23 THE COURT: The law allows the Court to
24 stack sentences in this case, which means they would
8:54AM25 run consecutively and not at the same time if the Court

8:54AM 1 chooses to do that.

2 If the Court chooses not to do that,
3 they would not run consecutively.

4 Do you understand the possibility of the
8:54AM 5 stacking the sentences?

6 DEFENDANT: I do.

7 THE COURT: Now, you have a right to
8 fight these counts. That means that you can ask for a
9 jury trial and you can plead not guilty and force the
8:54AM 10 State to prove this beyond a reasonable doubt. Your
11 attorney can cross-examine the witnesses against you.
12 You can call witnesses on your own behalf and you can
13 even testify if you want to. If you do not testify,
14 that could not be held against you.

8:54AM 15 Do you understand all of those rights?

16 DEFENDANT: I do.

17 THE COURT: Do you wish to fight any of
18 these counts?

19 DEFENDANT: I do not.

8:55AM 20 THE COURT: Do you waive all of the
21 rights that I have gone over with you as well as any
22 other rights that are contained in State's Exhibit
23 No. 1?

24 DEFENDANT: I do.

8:55AM 25 THE COURT: Are you satisfied?

8:55AM 1 MR. JAMES: Except on the right to
2 appeal, Judge.

3 THE COURT: You are not waiving your
4 right to appeal. That has been marked out, so that
8:55AM 5 would not be included. You have the right to appeal
6 your case.

7 As to the other rights that are
8 contained in this form, do you understand that you
9 would be waiving those?

8:55AM10 DEFENDANT: I do.

11 THE COURT: Now, since this charge --
12 these counts involve sex offenses, do you understand
13 all the admonitions that have been given to you in a
14 document that I have marked State's Exhibit No. 4?

8:55AM15 DEFENDANT: I do.

16 THE COURT: In each place you're
17 supposed to initial any of these blanks.

18 MR. JAMES: I'm sorry, Judge.

19 (Defendant initials blanks.)

8:56AM20 THE COURT: Your attorney has asked you
21 to initial those and you have done that here in open
22 court in each place where your initials appear.
23 Correct?

24 DEFENDANT: Correct.

8:57AM25 THE COURT: You did sign with your

8:57AM 1 attorney on the back page?

2 DEFENDANT: Correct.

3 THE COURT: And each place where you
4 initialed and signed, is that an indication that you
8:57AM 5 clearly understand and have been made aware of all of
6 these ramifications of the sex offender laws and
7 registration laws?

8 DEFENDANT: Yes.

9 THE COURT: Now, this, quote, plea
8:57AM 10 agreement -- which in some ways is not a plea
11 agreement -- State's Exhibit No. 2, have you read that?

12 DEFENDANT: Yes.

13 THE COURT: Is that your signature on
14 it?

8:57AM 15 DEFENDANT: It is.

16 THE COURT: Is that your agreement in
17 this case?

18 DEFENDANT: It is.

19 MR. JAMES: Judge, there is one other
8:57AM 20 thing that wasn't set to writing.

21 Also, the State has agreed not to file
22 any of the non-charged images that were seized off of
23 his computer.

24 MR. PHELPS: That's correct, Your Honor.
8:58AM 25 Anything in our possession that we have at this time.

8:58AM 1 THE COURT: That is a matter of record.
2 Finally, I have marked these documents
3 State's Exhibit Nos. 3 and 3A; 3A is a continuation of
4 No. 3, and it is entitled "Request to Consider

8:58AM 5 Unadjudicated Offenses" which is a law, Section 12.45
6 of the *Texas Penal Code*, which gives you the
7 opportunity of pleading to certain matters, and having
8 prosecution barred against you in those matters.

9 The State could not go forward if I bar
8:58AM10 prosecution based on their recommendation in the cause
11 numbers and the counts that have been set out in this
12 document marked State's Exhibits 3 and 3A -- paragraphs
13 one through five on No. 3, and one and two in 3A.

14 Do you understand how that law works and
8:59AM15 was is involved in it?

16 DEFENDANT: Yes, sir.

17 THE COURT: How do you plead to these
18 counts that are set forth in 3 and 3A?

19 DEFENDANT: Guilty.

8:59AM20 THE COURT: All right.

21 How do you plead to Counts 1 through 10
22 in Cause No. 09-02494, possession of child
23 pornography; how do you plead to those ten counts?

24 DEFENDANT: Guilty.

8:59AM25 THE COURT: Are you pleading guilty to

8:59AM 1 each and every count?

2 DEFENDANT: Correct.

3 THE COURT: Are you pleading guilty
4 because you are in fact guilty and for no other reason?

8:59AM 5 DEFENDANT: Yes.

6 THE COURT: Has anybody put any pressure
7 on you or promised you anything other than what is
8 contained in this, quote, plea bargain agreement, which
9 is -- as I said -- really in a way not a plea bargain

8:59AM10 agreement?

11 DEFENDANT: No, sir.

12 THE COURT: You understand that you, by
13 pleading guilty, are open to the full range of
14 punishment as well as the possibility of the stacking
8:59AM15 of the counts.

16 DEFENDANT: I do.

17 THE COURT: You do retain your right to
18 appeal as part of this agreement.

19 DEFENDANT: I do.

9:00AM20 THE COURT: We have got State's 1 and 2,
21 3, and 3A and 4.

22 What says the State?

23 MR. PHELPS: We offer those exhibits
24 Your Honor.

9:00AM25 MR. JAMES: No objection.

9:00AM 1 THE COURT: All of those exhibits are
2 now admitted into evidence.

3 (State's Exhibit Nos. 1, 2, 3, 3A & 4
4 admitted into evidence.)

9:00AM 5 THE COURT: Do you want me to find him
6 guilty today or are we going to wait on that; or what?

7 MR. PHELPS: That is up to you, however.
8 I mean, technically speaking -- yeah, I think that is
9 probably best at this point.

9:00AM10 THE COURT: Based on your plea and the
11 evidence adduced, Mr. Baird, I do find you guilty of
12 each of the first ten counts of the indictment that you
13 pled to and convict you of those counts.

14 As to the counts that are contained in
9:00AM15 the request to consider unadjudicated offenses, I bar
16 prosecution in each of those counts.

17 We will reset your punishment hearing
18 for a later date.

19 MR. JAMES: Judge, may I put a few
9:01AM20 things on the record?

21 THE COURT: Go right ahead, sir.

22 MR. JAMES: Gregg, we talked about how
23 to handle this case; you and I discussed it at length.
24 I indicated to you at length the State's plea bargain
9:01AM25 offer and you turned that down. Right?

9:01AM 1 DEFENDANT: I'm sorry?

2 MR. JAMES: I communicated to you the
3 State's plea bargain offer that you did not want to
4 take, is that right?

9:01AM 5 DEFENDANT: Correct.

6 MR. JAMES: I also told you that if we
7 went to jury trial, the one advantage of a jury trial
8 is what we call a second bite of the apple on the
9 search issue. We could have gotten a jury charge on
9:01AM10 that search issue. You remember I told you that was
11 the one advantage of doing that. Correct?

12 DEFENDANT: Correct.

13 MR. JAMES: But you said -- and I think
14 that it was probably a wise decision -- you decided
9:01AM15 that you did not want to go that route. Is that
16 correct?

17 DEFENDANT: Correct.

18 MR. PHELPS: Just one thing.

19 THE COURT: Yes, sir.

9:02AM20 MR. PHELPS: What I was concerned about
21 and what I mentioned to Mr. James is that if he has now
22 been now found guilty he is not eligible for deferred
23 adjudication. The Court can't grant that.

24 MR. JAMES: Technically it wasn't part
9:02AM25 of our plea bargain agreement. My client and I didn't

9:02AM 1 really discuss that issue.

2 THE COURT: Do you want me to withdraw
3 the finding of guilt at this point?

4 MR. JAMES: I think to cover -- let me
9:02AM 5 discuss.

6 (Discussion off the record.)

7 MR. JAMES: Judge, I think that would be
8 the best, just to have that full range available to the
9 Court.

9:03AM10 THE COURT: All right. The Court
11 withdraws the conviction and the finding of guilt and
12 withholds that finding until the -- if the Court does
13 so -- at the punishment phase.

14 MR. PHELPS: Just for the record, since
9:03AM15 the Court has mentioned a couple of times the
16 quote/unquote plea bargain, it probably wouldn't hurt
17 to have a recitation of exactly what we're doing here,
18 and that is, my understanding of our agreement is that
19 Mr. Baird has agreed to plead guilty to the Court and
9:03AM20 go to the Court for punishment, preserving his right to
21 appeal the Court's ruling on the motion to suppress.
22 The State has agreed to 12.45 90 of the counts in
23 exchange for a plea of guilty on the 10 counts of child
24 pornography. I think that pretty much states the sum.

9:03AM25 So technically, this is not a plea

9:03AM 1 bargain insomuch as we have agreed to 12.45 on 90
2 counts and he has agreed to plead guilty to 10, and we
3 have both agreed to go to you for punishment.

4 THE COURT: This plea agreement sets
9:04AM 5 that out, just what you said there. Right?

6 MR. JAMES: Yes, sir.

7 THE COURT: This is all on here what you
8 just said?

9 MR. PHELPS: Yes, it is. I probably
9:04AM10 don't have to say this because the Court has withdrawn
11 the findings of guilt, but I presume also that the
12 12.45, the 90 counts we're still -- if something
13 happens between now and sentencing, I am going to feel
14 free to go ahead and prosecute those other 90 charges.

9:04AM15 THE COURT: Withdrawing the 12.45 order?

16 MR. JAMES: If he, like, jumps bond or
17 something. Is that what you're talking about?

18 MR. PHELPS: Yes, I am not bound by that
19 12.45 until such time as the Court --

9:04AM20 MR. JAMES: If he jumps bond or
21 something, we understand, Judge, that all bets are off.

22 MR. PHELPS: Obviously, if we have a
23 sentencing hearing and go through with all that, then
24 obviously the 12.45 attaches. I just think we need to

9:04AM25 be in the posture --

9:05AM 1 MR. JAMES: Then we could ask for an
2 jury trial.

3 MR. PHELPS: Yes.

4 MR. JAMES: That's fine.

9:05AM 5 THE COURT: I am withdrawing also the
6 barring of prosecution under 12.45 of the other counts
7 at this time also.

8 MR. JAMES: Do you understand, Gregg?

9 DEFENDANT: Yes.

9:05AM10 MR. JAMES: Assuming you don't jump
11 bond, assuming you don't shoot somebody.

12 DEFENDANT: I understand.

13 MR. JAMES: I'm not talking about a
14 speeding ticket or something. Assuming no major
9:05AM15 problems, then all that will be done at that point.

16 DEFENDANT: Okay.

17 MR. JAMES: Just as the judge said: The
18 full range of punishment, from deferred all the way
19 through stacking of sentences.

9:05AM20 DEFENDANT: Yes, sir.

21 MR. PHELPS: I think that is everything,
22 Judge.

23 THE COURT: Anything else?

24 MR. JAMES: No.

25 (Adjourned.)

1 STATE OF TEXAS
2 COUNTY OF BRAZOS

3 I, Carolyn J. White, Former Official Court
4 Reporter in and for the 272nd District Court of Brazos
5 County, State of Texas, do hereby certify that the
6 above and foregoing pages contain a true and correct
7 transcription of all portions of evidence and other
8 proceedings requested in writing by counsel for the
9 parties to be included in this volume of the Reporter's
10 Record in the above-styled and numbered cause, all of
11 which occurred in open court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's Record
14 of the proceedings truly and correctly reflects the
15 exhibits, if any, offered by the respective parties. I
16 further certify that the total cost for the preparation
17 of this Reporter's Record is \$123.50 and was paid/will
18 be paid for by DEFENDANT.

19 WITNESS MY OFFICIAL HAND this the 30th day of
20 August, 2010.

21
22 

23 Carolyn J. White, CSR, RPR
24 Texas CSR 6411 Expiration: 12/31/10
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